

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

CONSUMER ADVOCATE DIVISION

vs.

BELLSOUTH TELECOMMUNICATIONS,
INC.

'99 NOV 22 PM 4 06

Docket No. 99-00574
EXECUTIVE SECRETARY

Tariff 99-00574

RESPONSE IN OPPOSITION TO BELLSOUTH MOTION TO LIMIT DISCOVERY AND
OBJECTION TO NOTICE AND SCHEDULE OR ALTERNATIVE REQUEST FOR
BELLSOUTH TO PROVIDE ONLY THAT INFORMATION NOT IN POSSESSION OF THE
TENNESSEE REGULATORY AUTHORITY

Comes the Consumer Advocate Division in opposition to the motion of BellSouth to limit discovery. The Consumer Advocate Division objects to the motion on the grounds that it is not in conformance with TRCP 26 and Tenn. Code Ann. § 65-4-118.

BellSouth seeks to preemptively limit discovery of relevant evidence. It cites lawfully adopted by the judiciary as its source of authority, while the Tennessee Regulatory Authority has actually considered and refused to adopt similar rules. Moreover, BellSouth's motion is not consistent with TRCP 26 which provides specific procedures for limiting discovery.

TRCP 26 provides in pertinent part:

26.02 Discovery Scope and Limits. Unless otherwise limited by order of the Court in accordance with these rules, the scope of discovery is as follows:

(1) IN GENERAL. Parties may obtain discovery regarding **any matter**, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to

lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision 26.01 shall be limited by the Court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or, (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The Court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision 26.03.

BellSouth's motion is not made in accordance with TRCP 26.03 nor does it otherwise demonstrate that any particular discovery request is unwarranted.

Moreover, any decision to limit discovery is inconsistent with the purpose of Tenn. Code Ann. § 65-4-118 whenever information is not in possession of the agency. In this case the Consumer Advocate Division has no cause to believe that the information sought is in the possession of the agency.¹ As a result the Consumer Advocate Division respectfully believes that considering the legislation in *pari materia* it has a right to obtain the information and the Authority has a duty to assure that the Consumer Advocate Division has the information requested.

Although the Consumer Advocate Division also seeks an early hearing, we note that the notice and schedule will place Tennessee consumers in an inferior position for the hearing since BellSouth is uniquely in possession of the information necessary for the Consumer Advocate Division to fully develop its theory and prepare its case. The issues at stake in this litigation

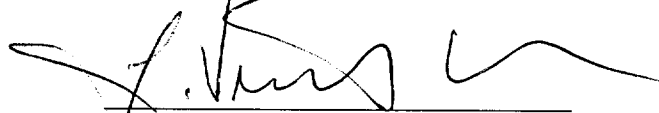
¹The Consumer Advocate Division has filed an information request essentially duplicating the discovery sought from BellSouth to be sure.

warrant the discovery sought by the Consumer Advocate Division. Moreover, the Notice does not provide for depositions. As a result, the limitations on discovery and the schedule if not changed, create a situation where review of the final agency decision would not provide an adequate remedy.

Finally, the Consumer Advocate Division filed a request for the appointment of a hearing officer which we believe has been appointed. We respectfully submit that the "notice" violates due process since it has been issued without a hearing on the Consumer Advocate Division's earlier motion.

Wherefore the Consumer Advocate Division prays that BellSouth's motion to limit discovery be denied or alternatively, that BellSouth be required to answer only that information not in possession of the agency.

Respectfully Submitted,

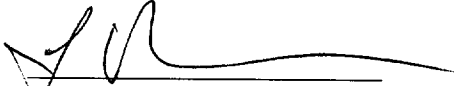
A handwritten signature in black ink, appearing to read 'M. Vincent Williams', is written over a horizontal line.

M. Vincent Williams
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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Document has been mailed postage prepaid to the parties listed below this 22nd day of November, 1999.

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E. Vincent Williams